IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

THURSDAY, THE 2ND AUGUST 2007 / 11TH SRAVANA 1929

RSA.No. 232 of 2007()

AS.203/2005 of I ADDL. DISTRICT COURT, PALAKKAD
OS.820/2003 of ADDL.MUNSIFF COURT, PALAKKAD

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APPELLANT/RESPONDENT/PLAINTIFF

A.C.VASUDEVAN, AGED 76 YEARS,
S/O CHAMU MOOTHAN, KARNAKI NAGAR,
MOOTHANTHARA, KOPPAM AMSOM,
PALAKKAD TALUK.

BY ADV. SRI.C.P.RAVIKUMAR

RESPONDENT/APPELLANTS/DEFENDANTS

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1. S.DHANASEKHARAN, AGED 54 YEARS,
S/O.V.SUBRAMANIAN, 27/196,CHINNAPPILLA STREET,
KOPPAM AMSOM, PALAKKAD TALUK.

2. A.GOKULA BAI, AGED 41 YEARS,
W/O. DHANASEKHARAN, 27/196,
CHINNAPPILLA STREET, KOPPAM AMSOM,
PALAKKAD TALUK.

BY ADV. SRI.G.SREEKUMAR
SRI.SREEJITH .R.NAIR

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 02/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON I.A.NO.481/07 IN R.S.A.232/07

DISMISSED

2/8/2007

SD/-M.SASIDHARAN NAMBIAR,JUDGE.

//True copy//

PS to Judge.

M.SASIDHARAN NAMBIAR,J.

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R.S.A. NO. 232 OF 2007

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Dated this the 2nd day of August, 2007

JUDGMENT

Plaintiff in O.S.820/2003 on the file of Munsiff Court, Palakkad is the appellant. Defendants are the respondents. Appellant instituted the suit seeking a decree for arrears of rent contending that he is the owner of the plaint schedule building and respondents obtained the building on rent agreeing to pay monthly rent of Rs.1250/- after making a security deposit of Rs.50,000/- and rent was subsequently enhanced to Rs.1612/- and on 29.1.1998 appellant along with first respondent executed an agreement for sale whereunder plaint schedule property was agreed to be purchased by first respondent and sold by the appellant and security was treated as advance amount towards the agreement for sale and instead of purchasing the property within the time after paying the balance consideration he dragged the

matter and finally filed O.S.64/1999 for specific performance of the agreement and respondents did not pay the rent from 20.2.2001 and therefore appellant is entitled to a decree for realisation of the arrears of rent. Respondents resisted the suit contending that on the execution of agreement for sale, the tenancy right does not survive and thereafter they are not liable to pay any rent and as per the decree in O.S.64/1999 specific performance of the agreement was granted and in such circumstance, appellant is not entitled to the decree sought for.

2. Learned Munsiff on the evidence of PW1, DW1 and Exts.A1 to A4 and B1 to B3 granted a decree for realisation of Rs.20,956/- being the arrears of rent claimed in the suit with interest at 6% per annum. Respondents challenged the decree and judgment before the District Court, Palakkad in A.S.203/2005. Learned Additional District Judge on reappreciation of evidence found that the relationship between the appellant and the

respondents was originally was landlord and tenant but subsequently as per the agreement for sale that relationship has been changed and the security deposited by the respondents at the time of rental arrangement was treated as part of the sale consideration and the agreement for sale does not provide for payment of rent and in such circumstance, appellant is not entitled to the decree for realisation of rent. The decree granted by the trial court was set aside and the suit was dismissed. It is challenged in the second appeal.

3. Learned counsel appearing for appellant was heard.

4. Appellant has no case that under the agreement for sale, respondents are liable to pay any rent. The arrears of rent claimed in the suit was for a period, subsequent to the execution of agreement for sale. By executing the agreement for sale with first respondent, it was agreed by the appellant that the security amount deposited

by the tenant at the time of the rental arrangement is treated as the advance for the sale consideration. Hence the relationship between the parties drastically changed. Thereafter respondents have been in possession of the property not as tenants but in part performance of the agreement for sale. Finally as per the decree in O.S.64/1999 a sale deed was also got executed by the respondents. In such circumstance, as rightly found by the first appellate court, appellant is not entitled to claim arreas of rent for a period subsequent to the date of the agreement for sale, as the tenancy arrangement does not subsist. No substantial question of law is involved in the appeal. The appeal is dismissed in limine.

M.SASIDHARAN NAMBIAR
JUDGE

tpl/-

M.SASIDHARAN NAMBIAR, J.

W.P.(C).NO. /06

JUDGMENT

SEPTEMBER,2006